New Jersey Court of Errors and Appeals

EUGENE FRANK, *Plaintiff-Respondent,* *v.* THE BOARD OF EDUCATION OF JERSEY CITY, *Defendant-Appellant.*	Appeal from Supreme Court.

BRIEF FOR PLAINTIFF.

Facts.

The stipulation of facts in this case shows that the work done by plaintiff for the Board of Education was work which that Board would have power to contract for direct. That the orders for said work were given by one Rowland, Supervising Architect of the defendant, or by one Wilson, Vice-Principal of the Jersey City High School, under defendant's control. That these orders were given from time to time for a period covering more than one year and were for emergency work requiring immediate performance before a meeting of the Board could have had to pass on the necessity of doing the same and ordering it to be done. That before the order of the work in question, the defendant had permitted said Rowland and Wilson for a number of years to give similar orders to plaintiff and others for similar work and that such orders had always been accepted and paid for by defendant in due course on presentation of bills, without questioning the authority of said Rowland and Wilson so to bind the defendant. That the defendant has

been accustomed to permit Rowland and Wilson to order labor and material of the nature sued for in this case and that their orders had been recognized by defendant and regularly paid for. That defendant knew that the plaintiff relied upon the fact of defendant's recognition of such previous orders when he furnished the work in question and relied upon the fact that such previous orders had been paid for. That defendant knew at or about the time the labor and material was furnished that the same had been furnished and that it did not for at least three years after the last work had been performed deny the authority of said Rowland and Wilson to order such work and material and bind the defendant and that the defendant had the use and benefit of the work so done and material furnished by plaintiff for defendant. That the prices charged are reasonable and if plaintiff was entitled to recover the amount of the judgment herein was correct. That the amounts of any particular order given at any one time did not exceed $500, and that duly verified bills therefore had been properly presented to defendant.

POINT I.

There was a ratification of the acts of the defendant's agents.

There was an efficient dealing with the subject matter.

The defendant was chargeable with knowledge of what Rowland and Wilson were doing and having with such knowledge had the benefit of plaintiff's work and materials is bound. *Bourgeois v. Freeholders of Atlantic,* 82 N. J. Law, 82.

POINT II.

Under the facts above stated the defendant was estopped to deny the authority of Rowland and Wilson to bind it.

The mere statement of facts is sufficient to impress one with the natural justice of plaintiff's claim, in that it is admitted that the work sued for was within the power of defendant to contract for. That it was emergency work necessary to be done before a meeting of the Board of Education could be held, that defendant had previously permitted for a number of years said Rowland and Wilson to give similar orders for similar work to the plaintiff and other contractors and had always recognized their authority and paid the bills, so contracted by them in due course, and that defendant knew at or about the time each of the items in question were furnished and that the defendant's items herein cover a period of more than one year and that no question of the authority of Rowland and Wilson had been raised until about at least three years after the last work had been done. Under such circumstances defendant is estopped to deny the authority of said Rowland and Wilson.

Estoppel binds a municipality as much as it does private corporations or individuals.

28 Cyc., 674, Note 19 and cases cited.

Certainly an individual would be bound under these circumstances by the act of his agent.

Strauss v. American Talcum Co., 63 N. J. L., 613;
Lyle v. Addicks, 62 N. J. Eq., 123.

In *Reuter v. Laure,* 94 Wis., 300, cited in the opinion below the Court said:

"The conduct of a municipal corporation may be such that a change of its position will cause such injustice to those who have relied upon such conduct as to warrant the court in preventing such change by an application of the equitable doctrine of estoppel in pais. * * * That the equitable rule is applied as freely against the public as against private persons is not maintained, but that the court may administer justice by its aid, even where that results in controlling the conduct of municipal corporations when the facts are such, in the judgment of the court, as to demand it, to prevent manifest injustice and wrong to private persons, is firmly established."

In the case of *The Maggie P.*, 25 Fed. Rep., 202 the doctrine was laid down that where a city has been in the habit of making contracts for the use of certain of its instrumentalities, and the employment of employees connected therewith, through officers in charge thereof, and of receiving compensation for the performance of such contracts, it will be estopped, in case of a breach by it of such a contract entered into on its behalf by such officers, from claiming that the officers acted without authority. The Court says (p. 205):

"It is true that there is no authority in any ordinance, at least, none that has been cited, specifically empowering any officer of the city to contract for doing this kind of service. But I do not think that is very material, because the testimony shows that the city, through its officers, has been in the habit of making these contracts and receiving compensation therefor; and having made that a business, so to speak, having received gain from such contracts, it does not lie in its mouth to say now that there was no officer authorized by ordinance to make this kind of contract."

The city having received the benefit of the contract, is estopped from setting up the fact of a violation of law in its performance.

People v. Zimmerman, 109 N. Y. Supplement, 396.

Most of the cases where municipalities have not been held liable for goods or work ordered for subordinate officer or agent have been in cases where there was no knowledge on behalf of the proper board of the doing of the work or furnishing material previous to the raising of the question of authority. And in our State this point appears in the following cases:

Jersey City Supply Co. v. Jersey City, 71 N. J. L., 631;
N. J. Car Springs Co. v. Jersey City, 64 N. J. L., 544.

In the case of *Bourgeois v. Freeholders of Atlantic County,* 82 N. J. L., 82, it was held the municipality might not only ratify an unauthorized act of another, but might become bound by "any efficient dealing with the subject matter" and it is contended that, that case is authority for plaintiff in view of the facts of this case showing the previously known course of dealing between these parties and the knowledge of defendant during the year in which this work was supplied, that it had been done in each instance and no question being raised as to authority of Rowland and Wilson for more than three years from the last work.

Douglass v Varnum vs.
Village of Morrisville,
95 Atl. 810 (Syllabus 1983

POINT III.

The work was emergency work.

Where competitive bidding was necessary, it has been held that in cases of emergency the municipality might fail to comply with the statute.

Harlem Gas Co. v. Mayor, 33 N. Y., 309;
North River Elec. Co. v. New York, 48 N. Y. App. Div., 14.

So in this case there was no time to wait for a meeting—the work had to be done—the High School had to be kept open.

The defendant having received the benefit of plaintiff's work and material under these circumstances ought to be held, in common honesty to its liability.

POINT IV.

Section 52 of the School Law does not apply to the facts in this case. That section only requires advertising for repair work to school buildings, when the amount exceeds $500. for any particular repairs at any particular time. The repair work sued for in this case, it will be observed by inspecting the items in the complaint and stipulation referred to repairs of different character in each instance and were separated from each other by considerable intervals of time covering in all a period of more than a year and the largest single item done at any one time does not exceed $500.00. It does violence to the language of the statute to hold that separate and distinct items of work done at different time upon separate orders each arising out of an emergency, which required the doing of the work should be treated as one contract merely because the same contractor did all the work. Certainly this would be so, unless there

appeared evidence that the work had been purposely separated and divided into sums under $500. for the purpose of evading the statute. No suggestion of any such purpose appears or can be inferred from the facts of this case but on the contrary it is admitted that each item of work arose out of an emergency.

There seems to be no express decision on this point in our State, but it would seem to be implied from the fact that no such objection was raised in two cases where the separate items aggregated more than $500, but were supplied at different dates.

See *Jersey City Supply Co. v. Jersey City,* Supra;
See *N. J. Car Spring Co. v. Jersey City,* Supra.

POINT V.

The record in this case fails to show any matter properly reviewable on this appeal.

It has been held that it is incumbent upon counsel to request the court to make a finding of law in favor of his client and to except or object to any adverse finding, if made in order to lay the foundation for a review on appeal, when a cause is submitted to a trial court on an agreed state of facts.

Blanchard Bros. v. Beveridge, 86 N. J. L., 561;
Webster v. Freeholders, 86 N. J. L., 256;
Standard Combed Thread Co. v. P. R. R., 87 N. J. L., 712;
Sulzberger & Sons Co. v. Miller, 87 N. J. L., 720;
Kargman v. Carlo, 85 N. J. L., 632;
Tuttle v. Apgar, 96 Atlantic, 96.

There is appended to the state of the case (page 15) an informal statement of objections by defendant's counsel, but it is submitted that it does not disclose any proper record of objection sufficient to support this appeal. The gist of counsel's objection was that he objected to all the allegation of fact in the stipulation, attempted to set up the doctrine of estoppel against the Board of Education in this case, or requesting the court to find that the doctrine of estoppel was not applicable. And again the court permitted counsel to object to the facts that are attempted to be put in the stipulation raising that question and the court announced its decision, but nothing appears to show that defendant's counsel excepted or objected to the ruling of the court after it was made.

But whatever may be thought as to the wisdom and propriety of the rule laid down in the above cases, plaintiff contends that so long as the rule exists he should be entitled to rely upon the fact that this record discloses nothing which can properly be reviewed, as it fails to show any ruling to which exception or objection was entered or any request for a ruling denied and excepted to. Nothing appears subsequent to the decision of the court, at most it merely appears that counsel prior to the decision, objected to the court considering the facts tending to establish estoppel or to applying the doctrine of estoppel to the facts. The court disregarded and overruled these objections and requests, but no objection to such ruling appears.

Plaintiff respectfully urges that the judgment of Supreme Court should be in all things affirmed with costs.

M. T. ROSENBERG,
Of Counsel.

Telephone 1697 Worth THE WEIBEZAHL PRINT 25 Elm St., N. Y.

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Notice of Appeal.

(Filed Feb. 8, 1916.)

New Jersey Supreme Court.

EUGENE FRANK, *Plaintiff,* *vs.* BOARD OF EDUCATION OF JERSEY CITY, *Defendant.*	Action at Law.

M. T. ROSENBERG, ESQ.,
Plaintiff's Attorney.

SIR:—

PLEASE TAKE NOTICE that the above named defendant hereby appeals from the judgment of the above entitled Court in the above entitled action to the Court of Errors and Appeals of New Jersey upon the following grounds:

1. The Court should have ordered judgment entered for defendant.

2. The Court should have found that the plaintiff's claim was within the fifty-second section of an Act entitled "An Act to establish a thorough and efficient system of free public schools and to provide for the maintenance, support and management thereof," approved October 19th, 1903, and was, therefore, illegal, being in excess of the sum of $500.

3. The Court found, and upon such finding the

judgment herein was entered, that the defendant was estopped to deny the authority of the school architect to bind the said defendant.

4. The Court found, and upon such finding the judgment herein was entered, that the school architect was the agent of the defendant with power to pledge the defendant's credit.

5. The Court found, and upon such finding the judgment herein was entered, that the defendant was liable to the plaintiff on an implied contract to pay to the said plaintiff the reasonable value of the services performed and materials supplied by the said plaintiff to the said defendant in the absence of a specific agreement between the parties as to the value of such services and materials before the same were so supplied.

6. The Court found, and upon such finding the judgment herein was entered, in favor of the plaintiff and against the defendant, which is a quasi municipal corporation, upon an implied contract.

7. The Court refused to find in favor of the defendant and against the plaintiff because the alleged contract aforesaid was illegal and beyond the power of the said defendant.

8. The Court found, and upon such finding the judgment herein was entered, that the defendant was estopped to deny the authority of the said school architect to bind the said defendant by the purchase of supplies and employment of services, because the said defendant had paid for such material and services in other instances where the same had been ordered by the school architect without any action upon the part of the said defendant.

Your obedient servant,

JOHN BENTLEY,
Defendant's Attorney.

Summons.

(Filed Feb. 10, 1914.)

THE STATE OF NEW JERSEY TO THE BOARD OF EDUCATION OF JERSEY CITY:

(L.S.) You are summoned to answer the annexed complaint of EUGENE FRANK in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this seventh day of February, Nineteen hundred and fourteen.

WM. C. GEBHARDT,
Clerk.

M. T. ROSENBERG,
Attorney.

Complaint.

(Filed Feb. 10, 1914.)

SUPREME COURT OF NEW JERSEY.

HUDSON COUNTY.

EUGENE FRANK,
Plaintiff,
vs.
BOARD OF EDUCATION OF JERSEY CITY,
Defendant.

Plaintiff, who resides in the City, County and State of New York, says:

(1) That between the 4th day of November, 1908, and the 28th day of December, 1909, the

plaintiff, at the request of the defendant, rendered to it services as contracting engineer, a true statement of which services, with the reasonable value thereof, is set forth in the schedule hereunto annexed, which is hereby referred to.

(2) For said services the said defendant undertook to pay plaintiff what the same were reasonably worth.

(3) That the said services were reasonably worth the sum of $684.30.

(4) The defendant has not paid the same.

Plaintiff demands, as damages, the sum of $684.30, with interest from June 1st, 1909, being the average date of account.

M. T. ROSENBERG,
Attorney of Plaintiff.

SCHEDULE.

Nov. 4, 1908.	To installing light feeder conduit under sidewalk	$ 67.50
Dec. 9, 1908.	To installing power feeder conduit under sidewalk	67.50
Oct. 15, 1909.	To repairing damaged wiring in roadway	40.00
Dec. 1, 1909.	To repairing motor generator	46.70
	To one pole tester	5.00
Dec. 28, 1909.	To installing power feeder conduit	228.80
	To installing light feeder conduit	228.80
		$684.30

Answer.

(Filed March 17, 1914.)

NEW JERSEY SUPREME COURT.

EUGENE FRANK,
Plaintiff,
vs.
BOARD OF EDUCATION OF JERSEY CITY,
Defendant.

The defendant, a corporation of the State of New Jersey, says:

1. It denies the truth of the matters and all of the matters contained in the complaint herein.

2. Defendant denies that there was any contract between the plaintiff herein and defendant for the services alleged to have been rendered by the said plaintiff in said complaint and schedule thereto annexed.

3. Defendant alleges that no officer, agent or employee was ever authorized by said defendant to request the performance of said services.

JOHN BENTLEY,
Attorney for Defendant.

Stipulation.

SUPREME COURT OF NEW JERSEY.
HUDSON COUNTY.

EUGENE FRANK, *Plaintiff,* *vs.* BOARD OF EDUCATION OF JERSEY CITY, *Defendant.*	Action at Law.

The following facts are hereby stipulated and agreed upon between the parties:

1. That plaintiff is a contractor for the doing of electrical work, having his place of business in the City of New York.

2. That all the items set forth in the schedule annexed to the complaint, except the item "One pole tester, $5.00," represent labor and materials furnished by the plaintiff to the defendant, and that said labor and materials were actually furnished.

3. That of said labor and materials so furnished the following:

Nov. 4, 1908.	To installing light feeder conduit under sidewalk	$ 67.50
Dec. 9, 1908.	To installing power feeder conduit under sidewalk	67.50
Oct. 15, 1909.	To repairing damaged wiring in roadway	40.00
Dec. 28, 1909.	To installing power feeder conduit	228.80
	To installing light feeder conduit	228.80

were actually furnished by the plaintiff to the defendant, by order of John T. Rowland, Jr., Supervising Architect of the defendant.

4. That said Rowland had been permitted by the defendant for a number of years to order labor

and materials of the nature sued for in this case, and his orders had been recognized by the defendant and the amount thereof paid by it. That said Rowland had obtained previous labor and materials from the plaintiff for the defendant, as well as the said labor and materials sued for in this cause as above stated, and in the case of many previous orders the same were duly paid by the defendant.

5. That the item of $46.70, for repairing motor generator, was for work and labor which was furnished by the plaintiff to the defendant by order of Charles C. Wilson, Vice-Principal of the Jersey City High School, which High School was under defendant's control.

6. That all the said items in the schedule, except the item of $5.00 for one pole tester, were emergency work, namely: that it was furnished at the time that the emergency existed, requiring its immediate performance, and before a meeting of the said defendant could be had to pass upon the necessity of doing the same and ordering it to be done.

7. That the said plaintiff had before the time that said work was ordered, and before the time of performing the said work, done other work of a similar character for the said defendant under and by similar requests of John T. Rowland, Jr., Supervising Architect of Schools, and of said Charles C. Wilson, and that all of the work which the plaintiff had done under said orders had been regularly paid for in due course by the said defendant as and when the bills for the same were presented, without any question as to the regularity of the requests or the authority of said Rowland and Wilson. That plaintiff did the labor and furnished the said materials sued for in this case, relying on the fact that previous labor and materials ordered by said Rowland and Wilson

under similar circumstances had been paid for by defendant.

8. That the said defendant has paid to other contractors bills for labor and materials furnished to it under similar circumstances as the labor and materials so as aforesaid furnished by the plaintiff to the defendant.

9. That the plaintiff knew that this practice existed and was permitted to exist by the defendant. That the defendant permitted, and the plaintiff recognized that it so permitted, said Rowland for a number of years to order labor and materials of the nature sued for in this case, and his orders had been recognized by the defendant and the amount thereof paid by it. That said Rowland had obtained previous labor and materials from the plaintiff for the defendant, as well as the said labor and materials sued for in this cause as above stated, on his representation that he had authority from the defendant to order the same, and in case of all previous orders the same were duly paid by the defendant.

10. That the defendant well knew that the said labor and materials had been furnished to it by the said plaintiff, at or about the times they had been so furnished, and that it did at no time until three years after the last work had been performed, deny any authority on the part of the said John T. Rowland, Jr., and said Charles C. Wilson to order the said work and materials.

11. That the defendant has had the use and benefit of the work so done and materials furnished by the plaintiff to the defendant.

12. That the amounts charged by the plaintiff for said labor and materials are the usual charges for labor and materials of that kind, and are reasonable, and so far as the bills ordered by John T. Rowland, Jr., are concerned were agreed upon by him.

Stipulation.

13. That the item of one pole tester, $5.00, represents the loss or damage to a glass instrument, called a pole tester, owned by the plaintiff, which was used by employees of the defendant, and injured and destroyed by them, and that said Charles C. Wilson, Vice-Principal of the High School, directed plaintiff to present his bill therefor to the defendant, stating it would be paid.

14. That bills in due form of law, under oath, were presented by the plaintiff to the defendant before this suit was commenced.

If the Court shall consider that the plaintiff is entitled to recover on the facts hereinbefore stipulated, judgment is to be entered in favor of the plaintiff and against the defendant, in the sum of Six hundred and eighty-four dollars and thirty cents ($684.30), with interest from June 1, 1909.

While the foregoing facts are conceded to be true, the right of the defendant is reserved at the hearing or argument of the above entitled action to object to the consideration of any or all of the said facts upon the ground that the same or any of them are or is irrelevant, incompetent or immaterial.

M. T. ROSENBERG,
Attorney of Plaintiff.

JOHN BENTLEY,
Defendant's Attorney.

Decision.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

EUGENE FRANK,
Plaintiff,
vs.
BOARD OF EDUCATION OF JERSEY CITY,
Defendant.

Action at Law.

M. T. ROSENBERG, Esq., Attorney for Plaintiff.

JOHN BENTLEY, Esq., Attorney for Defendant.

WILLIAM H. SPEER, Circuit Judge:

This case is tried before me by consent without a jury on stipulated facts which are hereunto annexed.

A reading of the stipulation makes it perfectly manifest that justice requires a judgment for plaintiff, if that result can be reached conformably to law. That it can admits, I think, of no doubt.

Plaintiff is an electrical-work contractor. Defendant is a municipal corporation. John T. Rowland, Jr., was supervising architect for defendant and Charles C. Wilson was Vice-President of the Jersey City High School. For a number of years prior to the order for labor and materials which Rowland and Wilson gave to plaintiff, for the value of which suit is now being brought, defendant had permitted Rowland and Wilson to order labor and materials of the nature set up in this case, had recognized such orders and paid therefor. Defendant has used and had the benefit of the labor and materials furnished by plaintiff. Their prices are reasonable, they were emergency work, the alleged agents represented themselves to have authority to contract therefor, the contract was

within the powers of defendant, and the whole course of conduct of defendant with respect to Rowland and Wilson was one that was calculated to induce in the mind of any reasonable man the belief that they possessed the authority they asserted they possessed, and did induce such belief in plaintiff's mind and led to the furnishing of the labor and material for which he sues herein.

The parties have stipulated that "if the Court shall consider that the plaintiff is entitled to recover on the facts stipulated, judgment is to be entered in favor of the plaintiff and against the defendant, in the sum of $684.30, with interest from June 1, 1909."

This is a clear case for the application of the doctrine of estoppel in pais. This doctrine is as binding on a municipality in appropriate cases as it is upon private corporations and individuals. 28 Cyc., 674, Note 19, and cases therein cited.

A good statement of the doctrine is found in *Reuter v. Laure,* 94 Wis., 300, which holds that

> "the conduct of a municipal corporation may be such that a change of its position will cause such injustice to those who have relied upon such conduct as to warrant the court in preventing such change by an application of the equitable doctrine of estoppel in pais. * * * That the equitable rule is applied as freely against the public as against private persons is not maintained, but that the court may administer justice by its aid, even where that results in controlling the conduct of municipal corporations when the facts are such, in the judgment of the court, as to demand it, to prevent manifest injustice and wrong to private persons, is firmly established."

A case in point, cited on the brief of plaintiff's counsel, is that of *"The Maggie P.,"* 25 Fed. Rep., 202, in which the doctrine was laid down that

where a city has been in the habit of making contracts for the use of certain of its instrumentalities, and the employment of employes connected therewith, through officers in charge thereof, and of receiving compensation for the performance of such contracts, it will be estopped, in case of a breach by it of such a contract entered into on its behalf by such officers, from claiming that the officers acted without authority. The court says (p. 205):

> "It is true that there is no authority in any ordinance, at least, none that has been cited, specifically empowering any officer of the city to contract for doing this kind of service. But I do not think that is very material, because the testimony shows that the city, through its officers, has been in the habit of making these contracts and receiving compensation therefor; and having made that a business, so to speak, having received gain from such contracts, it does not lie in its mouth to say now that there was no officer authorized by ordinance to make this kind of contract."

Each of the items in question is under five hundred dollars, and consequently a contract could be made therefor by the Board of Education without advertising. It was emergency work and had to be done before a meeting of the board could be had. It having been done by the plaintiff, the Board of Education having received the benefit, and it having been ordered by those who for a long period of time had been held out in similar cases by the Board of Education as having authority to contract therefor, the Board of Education ought not now to be permitted to disaffirm the contract. A municipal corporation is just as much bound to common honesty as a private corporation or individual.

It is suggested in the memorandum furnished

on behalf of the defendant that the total of these items is over five hundred dollars. This, however, does not militate to prevent a recovery by plaintiff therefor. They were all different items and running over a period of upwards of a year. There is nothing in the case to show that they were part of any single connected transaction or that their fragmentation was accomplished for any unlawful purpose. All presumptions of law are in favor of lawful and right action on the part of city officers, the maxim being *"Omnia praesumuntur rite esse acta,"* and the court will not assume, without evidence, that these items did constitute a single transaction, but will rather assume, in the absence of proof, the contrary.

An application of these principles leads to the rendition of a judgment in favor of the plaintiff and against the defendant in accordance with the stipulation of the parties hereinbefore quoted, for $684.30, with interest thereon from June 1, 1909.

Motion

Stipulation.

Mr. Rosenberg, representing the plaintiff in the action, read to the court the stipulation of facts on which the case was tried, followed by the statement: "Then we agree that if the court shall find in favor of the plaintiff, the amount is $684.-30. Mr. Bentley has a general reservation of objection to any of the above on the ground of immateriality or irrelevancy, as though they had been put in evidence."

That after argument by counsel Mr. Bentley, representing the City, said: "There is one feature—what I said in this stipulation about objecting to the relevancy etc., of any of these facts; does that protect me or should I formally place on the record my objection?" To which the Court replied: "You would better put your objection on the record and let me rule on it." Mr. Bentley said: "In the fourth paragraph of the stipulation I object to all of the—." He was interrupted by Mr. Rosenberg, who said: "Well, you object to the whole estoppel. Why can't you make a general objection there?" Mr. Bentley replied: "If you don't object to it I will. I will object to all the allegations of fact in the stipulation attempting to set up the doctrine of estoppel against the Board of Education in this case; and also I object—I guess that's all." The Court then said: "Well, you are amply protected by that to this extent: If I shall hold what you want me to—what you want to do is to request me to find that the doctrine of estoppel is not applicable, and if I find that the doctrine of estoppel is applicable it is against your objection, and if I am wrong you can reverse me. That raises the point distinctly on the record. And I will also permit you to object to the facts that are

attempted to be put in the stipulation raising that question, and I will admit them." Mr. Bentley said: "And I request your Honor to find that there was no ratification of the contract as attempted to be made by the architect." The Court replied: "Yes; and when I decide it I will make a finding anyhow of law on the subject, so that you can take that up and see if there is anything in that or not."

Judgment.

(Filed Mar. 18, 1914.)

This case was tried before Honorable William H. Speer, Judge of the Circuit Court, without a jury (jury having been waived), at the Hudson Circuit, on June 25th, 1915, and the said Judge having taken time to consider the same, now on this 17th day of December, 1915, finds in favor of the said plaintiff and against the said defendant, and assesses the damages of the said plaintiff at the sum of Nine hundred and fifty-three dollars and forty-six cents, besides costs.

Whereupon it is adjudged that the plaintiff recover of the defendant, the sum of Nine hundred and fifty-three dollars and forty-six cents and his costs, which are taxed at the sum of Sixty dollars and seventy-nine cents, making in the whole the sum of Ten hundred and fourteen dollars and twenty-five cents.

Damages	$ 953.46
Costs	60.79
	$1,014.25

Judgment entered December 28, 1915.

WM. S. GUMMERE,
C. J.